

## **GENERAL PROVISIONS FOR TEXAS DEPARTMENT OF HEALTH INTERAGENCY CONTRACTS**

### **ARTICLE 1. Preamble**

PERFORMING AGENCY and RECEIVING AGENCY (the parties) agree to make and enter into this grant contract (contract), to faithfully perform the duties prescribed by this contract, and to uphold and abide by its terms and provisions. This contract consists of RECEIVING and PERFORMING AGENCY identifying data, Details of Attachment(s), authorized signatures, General Provisions, and Attachment(s) with detailed Scope(s) of Work, Special Provisions, budget(s), and exhibit(s) as applicable. This contract represents the complete and entire understanding and agreement of the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract.

The person or persons signing and executing this contract on behalf of PERFORMING AGENCY, or representing themselves as signing and executing this contract on behalf of PERFORMING AGENCY, warrant and guarantee that he, she, or they have been duly authorized by PERFORMING AGENCY to execute this contract on behalf of PERFORMING AGENCY and to validly and legally bind PERFORMING AGENCY to all of its terms, performances, and provisions.

PERFORMING AGENCY assures compliance with this contract, including these General Provisions unless otherwise specified in any Special Provisions of the Attachment(s) to this document. If these General Provisions are revised or replaced during the term of this contract, and PERFORMING AGENCY does not consent to comply with the modified General Provisions, PERFORMING AGENCY may exercise its termination options in accordance with the General Provisions, Termination Article.

### **ARTICLE 2. Statement of Services to be Performed**

The services or resources to be provided are described in the contract Attachment(s) hereto. "Services" means special or technical services, including the services of employees. "Resources" means materials and equipment.

### **ARTICLE 3. Term**

The time period of this contract shall be governed by the term(s) of the contract Attachment(s). No commitment of contract funds is permitted prior to the first day or subsequent to the last day of the term. The term may be extended or shortened by amendment(s).

### **ARTICLE 4. Terms and Conditions of Payment**

RECEIVING AGENCY shall pay for services received from appropriation items or accounts of RECEIVING AGENCY from which like expenditures would normally be paid, based upon vouchers drawn by RECEIVING AGENCY payable to PERFORMING AGENCY. Payment received by PERFORMING AGENCY shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

Payments will be made only upon completion and acceptance of work as reflected in the applicable contract Attachment. No payment will be made for incomplete portions of the contract Attachment(s) unless the incomplete performance is at RECEIVING AGENCY's request. If RECEIVING AGENCY requests incomplete performance, RECEIVING AGENCY will reimburse PERFORMING AGENCY for actual costs and any noncancellable commitments incurred in the performance of this contract.

PERFORMING AGENCY must have incurred a cost within the applicable contract Attachment term to be

eligible for reimbursement under this contract and prior to requesting reimbursement. No later than 90 days after the end of the applicable contract Attachment term, RECEIVING AGENCY must receive vouchers from PERFORMING AGENCY for costs encumbered by the last day of the applicable contract Attachment term. Requests submitted and postmarked more than 90 days following the end of the applicable contract Attachment term may or may not be reimbursed, at the discretion of RECEIVING AGENCY.

PERFORMING AGENCY shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting cash payments including advance payments from RECEIVING AGENCY.

#### **ARTICLE 5. Termination**

The contract Attachment(s) may be terminated by mutual agreement of both parties.

Either party may terminate the contract Attachment(s) by giving the other party 30 days written notice of its intent to terminate. Written notice may be sent by any method which provides verification of receipt, and the 30 days will be calculated from the date of receipt.

The contract Attachment(s) may be terminated for cause by either party for breach or failure to perform an essential requirement of the contract Attachment(s).

#### **ARTICLE 6. Certification**

The parties certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the parties, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

#### **ARTICLE 7. Statutory and Regulatory Compliance Requirements**

The Uniform Grant and Contract Management Act (UGCMA), Texas Government Code, Chapter 783, and the Uniform Grant Management Standards (UGMS) as amended by revised federal circulars and incorporated in UGMS by the Governor's Budget and Planning Office apply as terms and conditions of this contract and are adopted by reference in their entirety. If a conflict arises between the provisions of this contract and the provisions of UGCMA and UGMS, the provisions of this contract will prevail unless expressly stated otherwise. A copy of UGMS manual and its references will be provided to PERFORMING AGENCY by RECEIVING AGENCY upon request. Where the provisions of PERFORMING AGENCY's own statutory and regulatory requirements conflict with the UGMS incorporated herein, then PERFORMING AGENCY's statutory and regulatory requirements will govern.

The parties shall comply with the applicable assurances prescribed in UGMS, Part III, "State Uniform Requirements for Grants and Cooperative Agreements," Subpart B-Pre-Award Requirements, item \_\_\_\_\_.14-State Assurances.

If applicable, the parties will also comply with the following:

- ▶ The National Research Service Award Act of 1971, 42 USC §§289a-1 *et seq.*, as amended, and 6601 (P.L. 93-348 and P.L. 103-43), as amended, regarding the protection of human subjects involved in research, development, and related activities supported by any applicable award of federal assistance, as implemented by 45 CFR Part 46, Protection of Human Subjects.
- ▶ The Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, as amended, which establish federal requirements for the regulation and certification of clinical

laboratories.

- ▶ National Research Service Award Act of 1971, as amended, 42 USC §§288 *et seq.* and 6601 (P.L. 93-348 and P.L. 103-43) regarding the protection of human subjects involved in research, development, and related activities supported by any applicable award of federal assistance.
- ▶ Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, which establish federal requirements for the regulation and certification of clinical laboratories.
- ▶ Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR §1910.1030, which set safety standards for those workers and facilities who may handle blood borne pathogens.
- ▶ Immigration Reform and Control Act of 1986, 8 USC §1324a, as amended, regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this contract.
- ▶ Article 9102, Texas Revised Civil Statutes, as amended, pertaining to standards which eliminate architectural barriers for persons with disabilities.
- ▶ Health and Safety Code §165.004, relating to the promotion of breast-feeding by providing information that encourages breast-feeding to program participants who are pregnant women or mothers with infants. Promotional material may be requested from RECEIVING AGENCY by calling (512) 406-0744.

If PERFORMING AGENCY provides medical, dental, psychological or surgical treatment to a minor under this contract, either directly or through contracts with subrecipients, the treatment to a minor shall be provided only if consent to treatment is obtained pursuant to Chapter 32 of the Texas Family Code relating to consent to treatment of a child by a non-parent or child. If requirements of federal law relating to consent directly conflict with Chapter 32 of the Family Code, federal law shall supersede state law.

#### **ARTICLE 8. Miscellaneous Provisions**

Amendment. Any amendments or supplements to this contract must be in writing and signed by individuals with authority to bind the parties.

Non-assignable. This contract cannot be transferred or assigned.

Subcontracts. PERFORMING AGENCY may subcontract and purchase the services and resources.

Severability. If any provision of this contract is found to be illegal or invalid, it will be severed from the contract and the remaining provisions of the contract will remain in effect.

Funding. This contract is contingent upon the availability of funding for the term of the contract.

Corrections and Revisions to Work. RECEIVING AGENCY may require PERFORMING AGENCY to correct or revise any errors, omissions or other deficiencies in any reports or services provided by PERFORMING AGENCY to ensure that such reports and services fulfill the purposes of this contract. PERFORMING AGENCY shall make the required corrections or revisions without additional cost to RECEIVING AGENCY.

#### **ARTICLE 9. Reports**

PERFORMING AGENCY shall submit financial, program, progress, and other reports requested by

RECEIVING AGENCY in the format agreed to by the parties. PERFORMING AGENCY shall provide RECEIVING AGENCY other reports as RECEIVING AGENCY determines to be necessary for the accomplishment of the objectives of this contract and to monitor compliance. If PERFORMING AGENCY is legally prohibited from providing such reports, it shall immediately notify RECEIVING AGENCY of this fact.

If applicable, PERFORMING AGENCY shall submit a Financial Status Report, State of Texas Supplemental Form 269a (TDH Form GC-4a) within 30 days following the end of each of the first three quarters. PERFORMING AGENCY shall submit a final financial report on TDH Form GC-4a not later than 90 days following the end of the Attachment term(s). Reports shall be submitted regardless of whether or not expenses have been incurred. PERFORMING AGENCY shall submit a State of Texas Purchase Voucher with the final financial report if all costs have not been recovered, or PERFORMING AGENCY shall refund excess monies if costs incurred were less than funds received.

#### **ARTICLE 10. Inspections**

RECEIVING AGENCY and, when federal funds are involved, any authorized representative(s) of the federal government have the right, at all reasonable times, to inspect or otherwise evaluate the work performed by PERFORMING AGENCY and its subrecipients and/or subcontractors. PERFORMING AGENCY and its subrecipients and/or subcontractors, if any, shall participate in inspections and provide reasonable access, facilities, and assistance to the representatives. All inspections and evaluations will be performed in such a manner as will not unduly interfere with the work.

PERFORMING AGENCY and its subrecipients and/or subcontractors, if any, shall give RECEIVING AGENCY, the State Auditor, and the federal government, or any of their duly authorized representatives, access to any pertinent books, documents, and papers of PERFORMING AGENCY for the purpose of making audits, examinations, excerpts, and transcripts of transactions related to this contract. RECEIVING AGENCY will have the right to audit billings both before and after payment.

#### **ARTICLE 11. Records Retention**

PERFORMING AGENCY shall retain and preserve all records relating to this contract generated or collected by PERFORMING AGENCY or subgrantee thereof according to Government Code §441.006, 13 TAC §6.10, RECEIVING AGENCY's certified records retention schedule, and UGMS, Part III, "State Uniform Requirements for Grants and Cooperative Agreements," Subpart C - Post-Award Requirements, Item \_\_\_\_42. Any record held by PERFORMING AGENCY which is not identified in the referenced retention schedules will be retained by PERFORMING AGENCY for a period of three years from the date of the last expenditure report submitted under contract Attachment(s) or until all audit questions are resolved, or until any court order(s) requiring record retention are dissolved, whichever time period is longer. PERFORMING AGENCY shall retain medical records in accordance with the governing rules or regulations which may be applicable.

The retention schedules referred to in this Article are incorporated by reference and made a part of this contract. PERFORMING AGENCY may obtain a copy of the record retention schedules or the Texas Department of Health Records Handbook by contacting RECEIVING AGENCY's Records Coordinator.

Legal requirements for PERFORMING AGENCY may extend beyond the retention schedules established herein.

#### **ARTICLE 12. Intellectual Property**

Texas Health and Safety Code §12.020(a), authorizes RECEIVING AGENCY to apply for, register, secure, hold, and protect a patent, copyright, trademark or other evidence of protection or exclusivity issued in or for intellectual property.

“Intellectual property” consists of inventions; discoveries; improvements to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; computer software; literary works; musical works with any accompanying words; dramatic works with any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works; words, names, symbols, devices, slogans or any combination thereof which have been adopted and used by RECEIVING AGENCY to identify goods and/or services and distinguish them from those of others; and any other creative works if they may be protected by a patent, copyright, trademark, service mark, collective mark, or certification mark or other evidence of protection or exclusivity whether or not protection or exclusivity has been applied for or received.

“Mark,” for purposes of trademark and service mark, includes a word, name, symbol, device, slogan or any combination thereof which has been adopted and used by RECEIVING AGENCY to identify goods and/or services and distinguish them from those of others. Federal trademark law also provides for collective marks and certification marks.

“Patent” protects any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement.

“Work made for hire” is a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, and the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

The term “works,” for purposes of federal copyright law, includes software; literary works; musical works with any accompanying words; dramatic works with any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works, sound recordings and architectural works.

All work performed that results in the production of original books, manuals, films, or other original material is the exclusive property of RECEIVING AGENCY. All right, title, and interest in and to said property shall vest in RECEIVING AGENCY upon creation. All work performed shall be deemed to be a “work made for hire” for copyright purposes and made in the course of the services rendered pursuant to this contract. To the extent that title to any such work may not, by operation of law, vest in RECEIVING AGENCY or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to RECEIVING AGENCY. RECEIVING AGENCY shall have the right to obtain and to hold in its own name any and all patents, copyrights, trademarks, service marks, certification marks, collective marks, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. PERFORMING AGENCY shall ensure all rights, titles, and interest in and to the intellectual property are secured to RECEIVING AGENCY from PERFORMING AGENCY and its subrecipients. PERFORMING AGENCY agrees to give RECEIVING AGENCY and agrees to require its subrecipients to give RECEIVING AGENCY, or any person designated by RECEIVING AGENCY, all assistance required to perfect the rights defined in this Article, without any charge or expense beyond those amounts payable to PERFORMING AGENCY for the services rendered under the contract.

If federal funds are used to finance activities supported by the contract Attachment(s) that result in the production of original books, manuals, films, or other original material, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a PERFORMING AGENCY or its subrecipient purchases ownership with grant support. PERFORMING AGENCY shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that “This publication was made possible by grant number \_\_\_\_\_ from (federal awarding agency)” or “The project described was supported

by grant number \_\_\_\_\_ from (federal awarding agency)” and “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency).”

In the event the terms of a federal grant award the copyright to PERFORMING AGENCY, RECEIVING AGENCY reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for RECEIVING AGENCY, public health, and state governmental noncommercial purposes (1) the copyright, mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trademarks, or patents to which a grantee, subgrantee or a contractor purchases ownership with grant support.

RECEIVING AGENCY may waive ownership of a copyright, mark, or patent to a university or college with statutory authority to hold a copyright, mark, or patent or to a subcontractor of the college or university that would have the right of ownership under rules or policies of the college or university as part of the consideration for a contract. If RECEIVING AGENCY waives ownership, RECEIVING AGENCY reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for RECEIVING AGENCY, public health and state governmental non-commercial purposes: (1) the copyright, mark, and/or patent in any intellectual property developed under a contract, grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, mark, and/or patent in any intellectual property for which a grantee, subgrantee or a contractor purchases ownership with grant support or with other funds from RECEIVING AGENCY. RECEIVING AGENCY may waive ownership of the copyright to accomplish the contract objectives dealing with public health through a qualified state college or university and enhance the recruiting benefits and prestige of the college or university.

PERFORMING AGENCY may publish the results of the contract performance if those results are subject to copyright law at its expense with prior RECEIVING AGENCY review and approval. RECEIVING AGENCY will not withhold the approval unreasonably. If RECEIVING AGENCY withholds approval, PERFORMING AGENCY may still publish the results of the contract performance but shall not reference the Texas Department of Health in any manner. If RECEIVING AGENCY approves and owns the copyright, any publication should include “© (the year of publication) Texas Department of Health, All Rights Reserved.” If PERFORMING AGENCY is the copyright holder, any publication shall include acknowledgment of the support received from RECEIVING AGENCY. At least six copies of any such publication must be provided to RECEIVING AGENCY. RECEIVING AGENCY reserves the right to require additional copies before or after the initial review.

PERFORMING AGENCY and any subrecipient, as appropriate, must comply with the standard patent rights clauses in 37 Code of Federal Regulations §401.14 or Federal Acquisition Regulations 52.227.11.

### **ARTICLE 13. Overtime Compensation**

PERFORMING AGENCY shall not use any of the funds provided by the contract Attachment(s) hereto to pay the premium portion of overtime. PERFORMING AGENCY shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the normal rate of pay for hours worked in excess of normal working hours.

### **ARTICLE 14. Equipment and Supplies**

In accordance with Health and Safety Code, §12.053, title to all equipment and supplies purchased from funds provided herein will be in the name of PERFORMING AGENCY throughout the contract Attachment(s) term(s) or until the contract Attachment is terminated.

All items of equipment purchased with Attachment funds must be itemized in the contract budget. Any changes to the equipment list contained in the budget must be approved in writing by RECEIVING AGENCY.

PERFORMING AGENCY will submit a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, RECEIVING AGENCY will notify PERFORMING AGENCY by means of a written budget modification.

Upon termination or expiration of applicable contract Attachment(s), title to any remaining equipment and supplies purchased from funds under this contract reverts to RECEIVING AGENCY. Title may be transferred to any other party designated by RECEIVING AGENCY. RECEIVING AGENCY may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to PERFORMING AGENCY.

PERFORMING AGENCY agrees to comply with Chapters 2151 through 2175 of the Texas Government Code, and Chapter 12, Health and Safety Code, and the rules adopted under those Acts when purchasing equipment or supplies.

#### **ARTICLE 15. Contracts with Subrecipients**

PERFORMING AGENCY may enter into contracts with subrecipients unless restricted or otherwise prohibited in specific contract Attachment(s). Prior to entering into an agreement equaling \$25,000 or 25% of a contract Attachment, whichever is greater, PERFORMING AGENCY shall obtain written approval from RECEIVING AGENCY.

Contracts with subrecipients shall be in writing and must include the following:

- name and address of all parties;
- a detailed description of the services to be provided;
- measurable method and rate of payment and total amount of the contract;
- clearly defined and executable termination clause;
- beginning and ending dates which coincide with the dates of the applicable contract Attachment(s) or cover a term within the beginning and ending dates of the applicable contract Attachment(s);
- access to inspect the work and the premises on which any of the work is performed, in accordance with the Reporting and Records Requirements Section contained in this contract; and
- all clauses required by state/federal statutes, executive orders, and their implementing regulations.

PERFORMING AGENCY is responsible to RECEIVING AGENCY for the performance of any subrecipient. PERFORMING AGENCY will monitor performance and maintain pertinent records that will be available for inspection by RECEIVING AGENCY.

PERFORMING AGENCY shall ensure that:

- all subrecipients are fully aware of the requirements imposed upon them by state/federal statutes and regulations; and
- subrecipients complete required audits.

#### **ARTICLE 16. Contracts for Procurement**

PERFORMING AGENCY may enter into contracts for procurement unless restricted or otherwise prohibited in specific contract Attachment(s). PERFORMING AGENCY agrees that it shall be responsible to RECEIVING AGENCY for the performance of any subcontracted activity.

Contracts for procurement shall be in compliance with state law.

#### **ARTICLE 17. Certification of Software, Hardware, Firmware and Micro Code Products**

PERFORMING AGENCY certifies that any supplied or supported software, hardware, firmware, and micro code products used individually or together as a system to comply with RECEIVING AGENCY contract requirements will operate “accurately” in the manner in which they were intended when given a “valid date” containing century, year, month, and day.

For purposes of this Article, “supplied or supported software, hardware, firmware, and micro code products” does not include software supported by RECEIVING AGENCY or an agency of the federal government.

PERFORMING AGENCY is responsible for installing and implementing any versions of any software provided by RECEIVING AGENCY or an agency of the federal government which is used in performance of this contract.

For purposes of this Article,

a) “accurately” is defined to include the following:

- 1) calculations must be correctly performed using four-digit year processing;
- 2) functionality-on-line, batch including entry, inquiry, maintenance and updates must support four-digit year processing;
- 3) interfaces and reports must support four-digit year processing;
- 4) processing with a four-digit year must occur without human intervention;
- 5) correct results in forward and backward date calculation spanning century boundaries must be provided;
- 6) correct leap year calculations must be performed; and
- 7) processing correct results in forward and backward date calculation spanning century boundaries must occur;

b) “date integrity” shall mean all manipulations of time-related data (dates, durations, days of week, etc.) will produce desired results for all valid date values within the application domain;

c) “explicit century” shall mean date elements in interfaces and data storage permit specifying century to eliminate date ambiguity;

d) “extraordinary actions” shall be defined to mean any action outside the normal documented processing steps identified in the product’s reference documentation;

e) “general integrity” shall mean no value for current date will cause interruptions in desired operation;

f) “implicit century” shall mean for any data element without century, the correct century is unambiguous for all manipulations involving that document;

g) “product” or “products” shall be defined to include, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code;

h) “valid date” shall contain a two-digit month, a two-digit day and a four-digit year.

PERFORMING AGENCY and its subrecipient(s) must obtain a warranty from any vendor/licensor from which it obtains product(s) that product(s) delivered and installed under the contract/license shall be able to accurately process valid date data when used in accordance with the product documentation provided by the contractor/licensor and require no extraordinary actions on the part of PERFORMING AGENCY, its personnel, or its subrecipient(s). Products under the contract/license shall possess general integrity, date integrity, explicit and implicit century capabilities. If the contract/license requires that specific products must perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed



products as a system. The duration of this warranty and the remedies available to PERFORMING AGENCY or its subrecipient(s) for breach of the warranty shall be defined in, and subject to, the terms and conditions of the contractor's standard commercial warranty or warranties contained in the contract/ license; provided, that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to PERFORMING AGENCY or its subrecipient(s) shall include repair or replacement of any supplied product if its noncompliance is discovered and made known to the contractor/licensor in writing within ninety (90) days after final acceptance. Nothing in the warranty shall be considered to limit any rights or remedies PERFORMING AGENCY or its subrecipient(s) may otherwise have under the contract/license.

RECEIVING AGENCY will not hold PERFORMING AGENCY responsible if the information coming to PERFORMING AGENCY's product/software from RECEIVING AGENCY is inaccurate or corrupt.

#### **ARTICLE 18. Survival of Terms**

Termination or expiration of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

#### **ARTICLE 19. Contracts for Purchase of Client Services**

The General Appropriations Act, Regular Session, 76th Legislature, Article II, Section 2, Subsection 13, requires additional items to be included in contracts for the purchase of client services. These items are set out in Exhibit 1, if applicable. Performance measures are set out in the contract Attachment(s), where applicable.

## EXHIBIT 1

### **Allowable Costs and Audit Requirements**

Only those costs allowable under UGMS and any revisions thereto plus any applicable federal cost principles are eligible for reimbursement under this contract. Applicable cost principles, audit requirements, and administrative requirements are as follows:

<b>Applicable Cost Principles</b>	<b>Audit Requirements</b>	<b>Administrative Requirements</b>
OMB Circular A-87, State & Local Governments	OMB Circular A-133	UGMS
OMB Circular A-21, Educational Institutions	OMB Circular A-133	OMB Circular A-110

### **Program Income**

PERFORMING AGENCY may develop a fee-for-service system and a schedule of fees for personal health services in accordance with the provisions of Health and Safety Code §12.031; the Texas Board of Health rules covering Fees for Clinical Health Services, 25 TAC §1.91; and other applicable laws provided, however, that a patient may not be denied a service due to inability to pay.

All revenues directly generated by contract Attachment(s) supported activity or earned only as a result of the Attachment(s) during the term of the Attachment(s) are considered program income. PERFORMING AGENCY shall identify and report this income utilizing the forms and time frames specified in the Reporting and Records Requirements Section of these provisions.

Under a cost reimbursement budget arrangement, PERFORMING AGENCY shall utilize one of the following methods for applying program income:

- Additive method - add the program income to the funds already committed to the project by both parties. Program income will be used by PERFORMING AGENCY to further the program objectives of the state/federal statute under which the Attachment(s) was made, and it shall be spent on the same project in which it was generated.
- Deductive method - deduct the program income from the total allowable costs to determine the net allowable costs.

PERFORMING AGENCY must expend program income during the Attachment term in which it is earned, and may not carry forward to the succeeding term. Program income not expended in the term in which it is earned shall be refunded to RECEIVING AGENCY.

Under a unit cost contract budget arrangement, PERFORMING AGENCY shall use program income to provide additional client services. Any program income not used to provide additional client services shall be deducted from PERFORMING AGENCY's total final billing to RECEIVING AGENCY at the end of the contract attachment term.

RECEIVING AGENCY may base future funding levels, in part, upon PERFORMING AGENCY's proficiency in identifying, billing, collecting, and reporting program income and utilizing it for the purposes and conditions

of the applicable contract Attachment(s).

### **Patient or Client Records**

Notwithstanding any other provision herein, if requested by RECEIVING AGENCY, PERFORMING AGENCY shall share all patient or client information with RECEIVING AGENCY when the contract involves patient or client care by PERFORMING AGENCY.

RECEIVING AGENCY may require PERFORMING AGENCY, or any subrecipient, to transfer a client or patient record to another agency or to RECEIVING AGENCY if the transfer is necessary to protect either the confidentiality of the record or the health and welfare of the client or patient.

In the event of termination or expiration, RECEIVING AGENCY may require the transfer of client or patient records as authorized by law upon written notice to PERFORMING AGENCY, either to another entity that agrees to continue the service or to RECEIVING AGENCY.

At the end of the contract Attachment term, PERFORMING AGENCY shall give RECEIVING AGENCY access to the records or provide copies for audit, examination, evaluation, inspection, litigation, or other circumstances that may arise, to the extent authorized by law.

PERFORMING AGENCY, or any subrecipient, shall not otherwise transfer an identifiable client record, including a patient record, to another entity or person without written consent from the client or patient, or someone authorized to act on his or her behalf. Written consent must be given on a form provided by RECEIVING AGENCY or as otherwise authorized by law, including the Texas Medical Practice Act, Texas Occupations Code, §§159.001 *et seq.*

### **Confidentiality**

PERFORMING AGENCY shall have a system in effect to protect client or patient records and all other documents deemed confidential by law which are maintained in connection with the activities funded under this contract. PERFORMING AGENCY shall not disclose or transfer confidential client or patient information, including information required by the Reporting and Records Requirements Section, except in accordance with applicable law.

If providing direct client care, services, or programs, PERFORMING AGENCY shall implement RECEIVING AGENCY's policies based on the model HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) workplace guidelines, and PERFORMING AGENCY shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Health and Safety Code, §§85.112-114.

### **Sanctions**

RECEIVING AGENCY may impose sanctions for any breach of contract and will monitor PERFORMING AGENCY for both programmatic and financial compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.

RECEIVING AGENCY may:

- A. terminate all or a part of the contract. Termination is the permanent withdrawal of PERFORMING

AGENCY's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by PERFORMING AGENCY of the authority to obligate previously awarded funds. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY after termination of an award are not allowable unless expressly authorized by the notice of termination. Termination does not include: (1) withdrawal of funds awarded on the basis of PERFORMING AGENCY's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a contract; (3) refusal to extend a contract or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception;

- B. suspend all or part of the contract. Suspension is, depending on the context, either (1) the temporary withdrawal of PERFORMING AGENCY's authority to obligate funds pending corrective action by PERFORMING AGENCY or its subrecipient(s) or pending a decision to terminate or amend the contract, or (2) an action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY during a suspension are not allowable unless expressly authorized by the notice of suspension;
- C. disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance;
- D. temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of advances or reimbursements to PERFORMING AGENCY or its subrecipient(s) for proper charges or obligations incurred, pending resolution of issues of noncompliance with contract conditions or indebtedness to the United States or to the State of Texas;
- E. permanently withhold cash payments. Permanent withholding of cash payments means that RECEIVING AGENCY retains funds billed by PERFORMING AGENCY or its subrecipient(s) for a) unallowable, undocumented, disputed, inaccurate, improper, or erroneous claims; b) failure to comply with contract provisions; or c) indebtedness to the United States or to the State of Texas;
- F. deny contract renewal or future contract awards to a PERFORMING AGENCY;
- G. delay contract execution with PERFORMING AGENCY while other imposed or proposed sanctions are pending resolution;
- H. place PERFORMING AGENCY on probation. Probation means that PERFORMING AGENCY will be placed on accelerated monitoring for a period not to exceed six months at which time items of noncompliance must be resolved or substantial improvement shown by PERFORMING AGENCY;
- I. conduct accelerated monitoring of PERFORMING AGENCY. Accelerated monitoring means more frequent or more extensive monitoring will be performed by RECEIVING AGENCY than would routinely be accomplished;
- J. require PERFORMING AGENCY to obtain technical or managerial assistance;
- K. disallow requests for reimbursement by disapproving costs or fees submitted for payment or

reimbursement by PERFORMING AGENCY;

- L. establish additional prior approvals for expenditure of funds by PERFORMING AGENCY;
- M. require additional, more detailed, financial and/or programmatic reports to be submitted by PERFORMING AGENCY;
- N. demand repayment from PERFORMING AGENCY;
- O. reduce the contract funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services as set out in the contract; and
- P. impose other remedies provided by law.

RECEIVING AGENCY will formally notify PERFORMING AGENCY in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. PERFORMING AGENCY is required to file, within 15 days of receipt of notice, a written response to RECEIVING AGENCY's program/division that sent the notice, acknowledging receipt of such notice and stating how PERFORMING AGENCY will correct the noncompliance or demonstrating in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If RECEIVING AGENCY determines that a sanction is warranted, and unless the sanction is subject to review (see Sanction Review section, below), RECEIVING AGENCY's decision is final and PERFORMING AGENCY must take corrective action.

In an emergency, RECEIVING AGENCY may immediately terminate or suspend all or part of the contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to a PERFORMING AGENCY, by any verifiable method, stating the reason for the emergency action.

An "emergency" is defined as the following:

- PERFORMING AGENCY is noncompliant and the noncompliance has a direct adverse impact on the public or client health or safety. The direct adverse impact may be programmatic or financial, impacting health or safety by failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the public or clients do not receive the benefits contemplated by the contract scope of work or performance measures,
- PERFORMING AGENCY fails to achieve a performance measure,
- PERFORMING AGENCY is reimbursed or requesting reimbursement for expenditures which are not in accordance with applicable federal or state laws and regulations or the provisions of the contract, or
- PERFORMING AGENCY is expending funds inappropriately.

Whether PERFORMING AGENCY's conduct or inaction is an emergency shall be determined by RECEIVING AGENCY on a case-by-case basis and shall be based upon the egregious nature of the noncompliance or conduct.

### **Sanction Review**

PERFORMING AGENCY may request a review of the imposition of the following sanctions: termination of

all or part of the contract, suspension of all or part of the contract, permanent withholding of cash payments, and denial of contract renewal or future contract awards.

PERFORMING AGENCY must make the request for review in writing to RECEIVING AGENCY within fifteen (15) days from the date of notification by providing written notice of the dispute to the person who signed the notification.

PERFORMING AGENCY's notice shall contain the following: (1) a copy of the letter from RECEIVING AGENCY notifying PERFORMING AGENCY of the sanction; (2) a specific description of each act that is the basis for the dispute; (3) the grounds upon which PERFORMING AGENCY bases the complaint; (4) an identification of the issue or issues to be resolved; (5) a precise statement of the relevant facts; (6) any documentation in support of PERFORMING AGENCY's position; and (7) a statement and authorities in support of PERFORMING AGENCY's position.

Evidence that PERFORMING AGENCY properly notified RECEIVING AGENCY consists of any of the following documents: (1) signature on delivery card; (2) confirmation of a facsimile to the correct telephone number; or (3) signed acknowledgment of delivery.

RECEIVING AGENCY's representative will schedule a meeting or a conference call to attempt to resolve the issues in dispute. If the dispute is resolved, any resolution will be in writing and will be signed by all parties. If the dispute is not resolved, RECEIVING AGENCY's representative will notify PERFORMING AGENCY in writing. RECEIVING AGENCY will appoint a reviewer(s), who will review the information, who may permit or require additional information and who may grant, deny, or modify all relief requested in the written notice of dispute. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all parties by any verifiable means. The decision of the reviewer(s) is final and is the final action of RECEIVING AGENCY for purposes of further proceedings.

A state statute or rule or a federal statute, regulation or guideline will prevail over the provisions of this Article unless the statute, rule, regulation or guideline can be read together with the provision or provisions of this Article to give effect to both.